

## **Readoption Review**

### **HIV Counseling and Testing of Pregnant Women 410 IAC 1-7**

IC 4-22-2.5-3.1(c) requires an agency to conduct a review to consider whether there are alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would minimize the economic impact of the proposed rule on small business.

#### **Description of Rule:**

The Indiana State Department of Health (ISDH) has the responsibility of reducing the number of new HIV infections in the state. IC 16-41-6-11 requires the ISDH adopt rules that include procedures to inform a pregnant woman of her test results, explain the side effects of treatment for a positive test result, and to establish a process for a woman who tests positive to appeal her placement on a wait list for any treatment program for which she may be eligible. It also requires the ISDH to maintain rules that set forth standards to provide HIV information to women who are pregnant, before delivery, at delivery, and after delivery. On August 1, 2004, the ISDH adopted 410 IAC 1-7 to establish the HIV Counseling and Testing of Pregnant Women. In accordance with IC 4-22-2.5, 410 IAC 1 -7 must be readopted to remain in effect.

#### **Readoption Analysis:**

**1) Is there a continued need for this rule?**

IC 16-41-6-11 requires the state department of health to establish procedures for informing pregnant women of HIV test results, explaining side effects of any HIV treatment, and the appeal process for the HIV Medical Services Program. It outlines standards for educating pregnant women about HIV and procedures for testing newborns when the pregnant woman refuses the test. This statute remains in effect; therefore, there remains a need for 410 IAC 1-7.

**2) What is the nature of any complaints or comments received from the public, including small business, concerning the rule or the implementation of the rule by the agency?**

Since the effective date, various health professionals are confused as to what they are required to do under Indiana Code 16-41-6, 410 IAC 1-6 and 1-7.

**3) Examine the complexity of the rule, including difficulties encountered by the agency in administering the rule and small businesses in complying with the rule.**

First, IC 16-41-6-5 requires that prenatal care provider test a pregnant woman for HIV. However, IC 16-41-6-7 states that a pregnant woman has a right to refuse a HIV test. To read the two statutes harmoniously, the prenatal care provider has to offer HIV testing to a pregnant woman. If a pregnant woman consents to a test ordered by the prenatal care provider and the test is positive, the prenatal

care provider is required to inform the pregnant woman of the test results and provide counseling. 410 IAC 1-6-6(b) allows a prenatal care provider to arrange for HIV testing directly or by referral, including confidential and anonymous testing sites approved by the department. If a pregnant patient goes to a confidential and anonymous testing site, the prenatal care provider will not receive the results of the HIV test. Thus, if the confidential and anonymous testing site knows the woman is pregnant, the confidential and anonymous testing site, as the provider of the HIV test, must meet the requirements in 410 IAC 1-7 for HIV counseling and testing of pregnant women instead of the prenatal care provider.

**4) To what extent does the rule overlap, duplicate, or conflict with other federal, state, or local laws, rules, regulations, or ordinances?**

This rule does not overlap, duplicate, or conflict with any other federal, state, or local laws, rules, regulations, or ordinances.

**5) When was the last time the rule was reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by this rule since that time?**

The rule was established on August 1, 2004. The HIV rapid test was not available when the rule was originated. Therefore, the current rule does not address procedures for the HIV rapid test.

July 9, 2010